IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1351 OF 2004

Shri Kailash Nandvalhar Joshi @ Kalu ...Petitioner

Vs.

1. Dr.P.S.Pascricha
2. The State of Maharashtra
3. The Superintendent, Nasik Road
Central Prison, Nasik ...Respondents

Shri U.N.Tripathi for the Petitioner
Shri D.S.Mhaispurkar,A.P.P.

CORAM: SMT.RANJANA DESAI &

A.S.OKA,JJ.

DATE : OCTOBER 11, 2004.

ORAL JUDGMENT:**(Per A.S.OKA,J.)**

1. By this Petition under Article 226 of Constitution of India, the Petitioner-detenu has taken exception to the order of detention dated 31st January 2004 passed by the Respondent No.1 under Section 3(2) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as MPDA Act).

2. The order of detention was served on the Petitioner-detenu on 4th February 2004. The order of detention is based on one criminal case registered against the Petitioner under Section

307 read with Section 34 of Indian Penal Code vide C.R.No.231 of 2003 dated 4th July 2003 by the Malad Police Station, Mumbai. The order of detention is also based on the complaint against the Petitioner under Section 37 (1)(a) read with Section 135 of Bombay Police Act, 1951 vide L.A.C.No.1551 of 2003 and two in-camera statements of witnessnes 'A' and 'B'.

3. One Saibaba Anjanellu Kodapuram is the complainant in C. R. No. 231 of 2003. The allegation of the complainant is that he is a student residing at Malad, Mumbai along with his parents and two brothers. He had appeared for S.Y.B.com. examination and was waiting for the result. His father is running a cloth ironing business near his residence and during the vacations the complainant is helping his father in the business. Therefore, the complainant knew most of the customers of his father who regularly visit the shop of his father for ironing their clothes. There is one person by name Sony residing in the same locality who frequently used to visit his shop and he used to pay bill on weekly basis. On 4th July 2003 at about 9.00 a.m. when the complainant was present in the shop, the said Sony visited the shop for ironing his clothes. The said Sony had not paid a pending bill of Rs.42/- and therefore the complainant insisted that Sony should pay pending bill first. On that there were an exchange of hot words between the complainant and said Sony. The said Sony abused the complainant and went back after giving threat that he would see him in the evening. At about

4.00 p.m. on the same day, the Petitioner along with his associates viz.Sony, Rashid Khan and Sujit Rathod went to the shop of the complainant and started assaulting the complainant on his face with fist blows. At that time the Petitioner and his associates stabbed the complainant in his abdomen by saying that he will get money in the heaven. The other associate of the Petitioner Sujit also stabbed the complainant with a knife on the left side of the chest. The complainant received several stab injuries and was bleeding profusely. He was trying to cover the stab injuries on his abdomen by putting his hand. At that time the Petitioner stabbed the complainant on his head with knife as a result of which he collapsed in the shop. Even thereafter, the Petitioner's associate Rashid Khan kicked the complainant. When the complainant shouted for help, one of the neighbours, his father and his brother rushed for help. At that time the Petitioner and his associates went out of the shop brandishing weapons and threatening the public to teach a lesson if anyone of them comes forward. Due to the said threats the people on the road started running helter skelter. The adjoining shopkeepers pulled down the shutters of their shops. Thereafter, the Petitioner and his associates went away. The complainant was taken to Bhagwati Hospital for medical treatment wherein he was admitted. The C.R. was registered on the same day. The associates of the Petitioner Sujit Rathod and Sony were arrested on 6th July 2003 and 9th July 2003 respectively and the other associate Rashid Khan was

nabbed on 11th August 2003. On 12th and 13th July 2003 the knives used by Sujit and Sony respectively were recovered at the instance of the said two associates of the Petitioner. The Petitioner was arrested on 13th December 2003 and at his instance knife used by him was recovered. The Petitioner was produced before the Metropolitan Magistrate and initially the order of remand to police custody was passed and subsequently he was remanded to judicial custody and till the date of passing detention order he was in the custody.

4. On 13th December 2003 one unknown person at about 1.45 p.m. telephonically informed the Malad Police Station that the Petitioner is threatening and extorting Hafta money from the hawkers in Valnai area at point of knife and because of the terror created by the Petitioner the passers-by were running helter skelter. When the P.S.I. and staff of Malad Police Station rushed to the spot, they found the Petitioner was brandishing the knife and threatening the hawkers in the area. The Petitioner was arrested and in personal search one Rampuri button knife apart from other articles were seized from the Petitioner under a Panchnama. In this connection L.A.C.No.1551 of 2003 was registered against the Petitioner at Malad Police station under Section 37(1) (a) read with Section 135 of Mumbai Police Act, 1951. In the said case also the Petitioner was arrested. On 15th December 2003, the Petitioner was ordered to be released on bail. However, the Petitioner has not availed of bail facility till the date of

passing detention order.

5. Statement of witness ‘A’ was recorded on 13th October 2003. The Witness ‘A’ is a rickshaw driver by profession. He has described the Petitioner and his associates Sujit Rathod,Rashid Khan and one Nadar as goondas in the locality. The witness ‘A’ stated in detail the activities of the Petitioner and his associates of creating terror in the minds of public and extorting Hafta money from the hawkers and rickshaw drivers and Chinese food vendors. The instances of threats and assault at the point of knife were also narrated in the said statement and he has narrated that in the third week of June 2003 at about 9.45 a.m. three passengers boarded his rickshaw at Malad Police station and asked the witness to take them to Valnai colony. While the witness was driving his rickshaw towards the said colony, the Petitioner and his associates halted the rickshaw and slapped him . The Petitioner and his associate Rashid Khan rested knife on the neck of the witness and threatened him and thereafter the Petitioner removed cash from the pocket of the witness. The Petitioner and his associate Sujit Rathod threatened the passengers in the rickshaw and assaulted them with kicks and fist blows. The Petitioner and his associates forcibly removed money from the pockets of the passengers and threatened them. As a result of brandishing knives by the Petitioner and his associates, the hawkers and passers-by started running helter skelter.

6. The statement of witness 'B' was recorded on 15th October 2003. He also described the activities of the Petitioner and his associates of indulging in extortion of Hafta money from the hawkers and Chinese food vendors and shopkeepers and giving threats of assault at the point of knife. He narrated a specific incident of 4th week of June 2003. At about 6.30 p.m. when he went to his shop, at that time the Petitioner along with his three associates entered the shop and rested knife on his neck and threatened him. The Petitioner's associates forcibly removed cash of Rs.1300/- from the cash counter of the shop. He requested the Petitioner not to do anything. when the Petitioner's associates pulled him out the cash counter and assaulted with kicks and fist blows. At the same time the Petitioner's associate one Ganesh was standing outside the shop and was threatening the passers-by and customers with open knife in his hand. He stated that no one came to his help due to terror created by the Petitioner and his associates. The Petitioner and his associates went back while brandishing their weapons as a result of which passers-by ran away and shopkeepers pulled down the shutters of their shops.

7. There are several challenges incorporated in the Petition to the order of detention. The learned Counsel Shri Tripathi appearing for the Petitioner has however pressed into service only the grounds (D), (E) and (G) in the Petition.

8. The ground No.(D) is based on alleged delay in passing the order of detention. Shri Tripathi learned Counsel for the Petitioner submitted that the last in-camera statement i.e. the statement of witness 'B' was recorded on 15th October 2003 and whereas the order of detention came to be passed on 31st January 2004. He submitted that all material documents which were relied upon by the Detaining Authority in the order of detention were available with the detaining authority on 15th October 2003 and therefore the detaining authority ought to have issued order promptly without any loss of time. He submitted that the detention of the Petitioner is illegal on account of gross delay in passing the order of detention.

9. Shri Tripathi further submitted that in C.R.No.231 of 2003, the complainant has stated that he received several stab injuries as a result of which he collapsed in the shop and was admitted in Bhagwati Hospital. He submitted that the injury certificate issued by the hospital were not placed before the detaining authority before passing the order of detention and copies thereof were not furnished to the Petitioner. He submitted that as a result of non-placement of the said vital documents, subjective satisfaction of the detaining authority has been vitiated and that due to non-furnishing of the said documents to the detenu, he could not make effective representation against the order of detention. Shri Tripathi learned Counsel for the Petitioner relied upon the unreported

Judgment of Division Bench of this Court [Coram:Vishnu Sahai and Dr.(Smt.)Pratibha Upasani,JJ.] dated 20th August 2004 in Criminal Writ Petition No.712 of 2001 in support of his contention.

10. Shri Tripathi lastly submitted that in view of the normal law of land, it was not possible for the Petitioner to obtain order of bail in C.R.No.231 of 2003 looking to the serious nature of the allegations made against the Petitioner. He, therefore, submitted that there was non-application of mind by the detaining authority.

11. Shri Mhaispurkar, learned A.P.P. relied upon the Affidavits-in-reply filed by the detaining authority, the Sponsoring Authority and the State Government. He submitted that there is no unexplained delay in passing the order of detention. He submitted that the detaining authority has recorded subjective satisfaction that the Petitioner was likely to be released on bail. He pointed out that the details of nature of injuries suffered by the complainant in C.R.No.231 of 2003 were mentioned in the Remand Application made before the learned Metropolitan Magistrate and copies of the Remand Applications were placed before the detaining authority and copies thereof were also supplied to the detenu. He submitted that after considering all the relevant material, the detaining authority has recorded subjective satisfaction that the Petitioner may be granted bail as per the normal law

of the land.

12. We have considered the rival submissions. In so far as the first contention of Shri Tripathi about alleged delay in passing the order of detention is concerned, it is to be borne in mind that the order of detention is passed on the basis of C.R.No.231 of 2003 dated 4th July 2003 and the Petitioner-detenu was absconding and could not be apprehended by the Police though the co-accused of the said accused were arrested on 6th and 9th July 2003. One Dattaram Vishwas Chauhan who has filed the Affidavit-in-reply on behalf of the Sponsoring authority stated that on 13th December 2003 the Petitioner was apprehended in L.A.C.no.1551 of 2003 and was arrested in connection with C.R.No.231 of 2003. He was interrogated after arrest and he allegedly admitted of having committed an offence along with his associates. Thereafter, the Sponsoring Authority prepared a proposal for detention of the Petitioner and forwarded the same to the D.C.P. Zone XI on 31st December 2003.

13. The detaining authority in its affidavit has stated that D.C.P. gave his endorsement on 1st January 2004 and thereafter the papers were forwarded to PCB CID, Mumbai and Senior PI of PCB-CID. The Senior P.I. gave his endorsement on 2nd January 2004 after going through the papers and forwarded the same to DCP(P). The DCP(P) gave his approval on 3rd January 2004 and forwarded the papers to the Additional

Commissioner of Police (Crime) and endorsement was given by the Additional Commissioner of Police on 6th January 2004 after going through the papers. 4th January 2004 was a public holiday. The detaining authority after formulating the draft grounds of detention granted approval on 8th January 2004. Thereafter, the papers were forwarded on the same day to the PCB CID for the purposes of sending the same to the Sponsoring Authority for translating the documents in a language known to the Petitioner. The Sponsoring Authority prepared necessary translations and sets of documents and furnished the same to the PCB CID. The senior P.I. of PCB CID after carefully going through the papers gave his endorsement and forwarded the papers to DCP (P) on 23rd January 2004. DCP (P) after carefully going through the same gave his endorsement on 28th January 2004. It is stated in the Affidavit that 24th, 25th and 26th January 2004 were holidays. The detaining authority stated that thereafter he carefully went through the entire material and issued the order of detention on 31st January 2004.

14. Considering the fact that the Petitioner was absconding till 13th December 2004 and was apprehended in the case under Section 37 (1) (a) read with Section 135 of the Mumbai Police Act, 1951 and the nature of the prejudicial activities alleged, it will have to be considered whether the alleged delay is explained or not. Whether the delay is long or short is immaterial. What is required to be considered is that

whether there is a satisfactory explanation for the delay. Considering the fact that the Petitioner was absconding till 13th December 2004 and was apprehended while indulging in a prejudicial activity which is the subject matter of the order of the detention, it cannot be said that the delay till 31st December 2003 in submitting the proposal for detention is unexplained. After 13th December 2003 the Petitioner was interrogated and immediately thereafter the Sponsoring Authority submitted a proposal for detention. The detaining authority in its Affidavit has explained as to how the proposal was processed from 1st January 2004. There is a valid explanation in the said Affidavit as to why one month's time for processing the proposal and issuing actual detention order was required. In our view the alleged delay has been satisfactorily explained in the Affidavit by the detaining authority and Sponsoring Authority. It is to be noted here that on 13th December 2004, the Petitioner was apprehended when he was brandishing a knife and was threatening the hawkers in Valnai area. Considering the prejudicial activities alleged against the Petitioner it cannot be said that the live link between the prejudicial activities and the order of detention is snapped. It also cannot be stated that the incidents alleged against the Petitioner are stale and remote in point of time. As per the allegation in the order of detention, prejudicial activities of the Petitioner continued at least till 13th December 2003. Therefore, there is no substance in the first contention raised by Mr.

Tripathi.

15. In so far as the second contention is concerned from the paragraph No.6 of the order of detention the awareness of the detaining authority of the fact that the Petitioner was in judicial custody in connection with C.R.No.231 of 2003 is clearly reflected. The detaining authority was also aware that the bail was not granted to the Petitioner in the said case. The detaining authority has also recorded a satisfaction that the Petitioner may be granted bail under the normal law of land in due course. The detaining authority has also recorded a satisfaction that considering the tendency and inclination of the Petitioner as reflected from his prejudicial activities, the detaining authority was satisfied that he was likely to revert to the activities prejudicial to the maintenance of the public order in future. In view of this position there is no substance in the second contention of the learned Counsel Shri Tripathi.

16. In so far as third contention is concerned, it is an admitted position that the medical record of the Bhagwati Hospital showing injuries on the person of the complainant in C.R.No.231 of 2003 was not placed before the detaining authority. Admittedly, the copies of applications made by the police for seeking remand before the learned Metropolitan Magistrate were placed before the detaining authority. The copies of the said applications were also supplied to the

Petitioner-detenu. The copies of the documents supplied to the Petitioner along with the order of detention are not placed on record by the Petitioner. Shri Tripathi appearing for the Petitioner has shown us the copies of relevant documents. We find that the nature of injuries sustained by the complainant with all its material particulars such as size of the wound etc. are incorporated in the remand applications. This shows that the vital material i.e. the copies of Remand Applications describing the nature of injuries sustained by the complainant was placed before the detaining authority. In paragraph No.13 of the Affidavit-in-reply of the detaining authority it is stated that copies of remand application were considered by the detaining authority. The detaining authority has stated that injury report or discharge certificate of Bhagwati Hospital were not referred to or relied upon by him. The detaining authority in paragraph No.13 has stated as under :

. "... It is submitted that there was the recovery of the knife from the detenu and his associates. It is submitted that in various remand applications of the detenue, the injuries received by the complainant are mentioned. I state that the copies of the said Remand Application were also furnished to the detenu alongwith its true correct and fair translation. I further state that I have considered the said incident from the point of view of its impact on public order i.e. the act of the detenue and his associates in assaulting the complainant in broad day light and also threatening the other persons. I say that in view of this for want of placing the medical certificate before me the same would not have affected

> my subjective satisfaction in issuing the Order of detention.."

17. We are, therefore, satisfied that the discharge certificate and Medical certificate of Bhagwati Hospital cannot be said to be vital documents. The nature of the injuries sustained by the complainant were set out in the remand applications which were before the detaining authority. Hence, it cannot be said that subjective satisfaction of the detaining authority was vitiated. Copies of the remand applications which were placed before the detaining authority were admittedly supplied to the Petitioner.

18. Hence, there is no merit in the Petition and the same deserves to be dismissed.

19. Before we part with the Judgment we would like to refer to one important aspect. In number of criminal Writ Petitions which were placed before us for final hearing where the challenge is to the order of preventive detention passed by the detaining authority, we find that the documents which are supplied to the Petitioner-detenu are not annexed to the Memorandum of Petition. In many cases we have observed that compilation of such documents is not kept ready by the Advocate concerned even at the time of hearing of the Petition. We, therefore, direct the Registrar-Judicial to issue necessary instructions to the office in this behalf. We make it clear that if the Petitioner is relying upon any of

the documents which are supplied to the detenu along with the order of detention such documents must be either annexed to the Petition or a proper compilation thereof must be kept ready by the Advocate for the Petitioner when the Petition is listed for final hearing. We make it clear that the directions which we have given above will not apply to the Petitions filed by the detenues through Jail.

20. Writ Petition is dismissed. Rule is discharged with no order as to costs. Office is directed to forward a copy of this order to the Registrar-Judicial of this Court.

(SMT.RANJANA DESAI,J.)

(ABHAY S. OKA,J.)